

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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:  
YEKUSIEL SEBROW, *et al.*, :  
:  
Plaintiffs, : 11-CV-00616 (ENV)  
:  
v. :  
:  
SHAPIRO, DICARO & BARAK, LLP, : 225 Cadman Plaza East  
:  
*et al.*, : Brooklyn, New York  
:  
Defendants. : November 28, 2011  
:  
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TRANSCRIPT OF CIVIL CAUSE FOR HEARING  
REGARDING INTERROGATORIES  
BEFORE THE HONORABLE RAMON E. REYES, JR.  
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Plaintiff: ABRAHAM KLEINMAN, ESQ.  
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For the Defendant: CHRISTOPHER KENDRIC, ESQ.  
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1 (Proceedings began at 10:17 a.m.)

2 THE CLERK: -- for discovery conference, docket  
3 number 11-CV-00616, Sebrow v. Shapiro, Dicaro & Barak, LLP.

4 Counsel for plaintiff, please state your name for  
5 the record.

6 MR. KLEINMAN: Good morning, Your Honor. Abraham  
7 Kleinman for the Sebrows.

8 THE COURT: Counsel for the defendant?

9 MR. KENDRIC: Good morning, Your Honor. Christopher  
10 Kendric, Goldberg Segalla, representing the defendant.

11 THE COURT: Good morning. Okay. You gave Miriam  
12 something.

13 MR. KLEINMAN: I did, Your Honor.

14 THE COURT: This looks like it was filed on ECF or  
15 at least -- not on ECF but in the courtesy copy that I got.

16 MR. KLEINMAN: What I gave Miriam I fabricated over  
17 the weekend and --

18 THE COURT: Fabricated?

19 MR. KLEINMAN: I assembled and I know that I didn't  
20 file it by ECF and, therefore, it was not filed by ECF. It  
21 was assembled for the purpose of making it easy to go through  
22 the discovery today, a little more comprehensive on the  
23 issues --

24 THE COURT: All right.

25 MR. KLEINMAN: -- that was presented --

1 THE COURT: Okay. All right.

2 MR. KLEINMAN: -- earlier.

3 THE COURT: What I did, as Mr. Kleinman can probably  
4 tell you, Mr. Kendric, is go through these question by  
5 question because in another conference in a case brought by  
6 the Sebrows I attempted to render rulings only to be told by  
7 defense counsel in that case, wait, wait, wait, hold on.  
8 That's a different case. So, in other words, I thought that  
9 other case was this case when I had them on the telephone  
10 call. I said, okay, I'm going to go through all the responses  
11 one by one and the defense counsel was caught unawares because  
12 it wasn't his case. But as I go through these you can say  
13 whatever it is you want, but I have at least tentative rulings  
14 on each of the objections.

15 Interrogatory number one, the answer looks fine to  
16 me.

17 MR. KLEINMAN: May I be heard on interrogatory  
18 number one, Your Honor?

19 THE COURT: Go ahead.

20 MR. KLEINMAN: Since we last met, Judge Schack has  
21 found defendant's firm in a similar case to this and to quote  
22 him -- I'd rather not misquote him -- is that he dismissed the  
23 underlying foreclosure and found them sanctioned for  
24 essentially bringing a lawsuit with no basis to bring the  
25 lawsuit and that was HSBC Bank USA N.A. v. Tire [Ph.] and

1 defendants had filed an appeal.

2 In his decision finding them had in frivolous  
3 conduct having brought the foreclosure, the judge decided in  
4 Bank of New York v. Silverberg, which has changed the entire  
5 specter of foreclosures -- what the Court found in Bank of New  
6 York v. Silverberg was that MERS cannot be a plaintiff. MERS  
7 has no right to assign. MERS is nobody and Bank of New York  
8 v. Silverberg, they said, we are well aware -- the Court said,  
9 we're well aware that 60 percent of mortgages go through --

10 THE COURT: What does that have to do with the legal  
11 name and business address of all persons who own a claim --  
12 who own or claim to own any legal or beneficial interests in  
13 the plaintiffs' loan at the present time?

14 MR. KLEINMAN: Because there's no possible way that  
15 JPMorgan Chase can own this loan based on defendant's very own  
16 documents, just not possible.

17 THE COURT: Then why does it matter what they say?

18 MR. KLEINMAN: If that's their position that it  
19 doesn't matter what they say, I guess I feel --

20 THE COURT: Well, you know, it -- if the documents  
21 say that JPMorgan Chase doesn't own the mortgage that's an  
22 issue of fact, so if they in a response to an interrogatory  
23 say that JPMorgan owns the mortgage what difference does it  
24 make? I mean, what's your trying to do with this  
25 interrogatory is get them to change their legal position on

1 who was the owner of the mortgage, not you, but their -- you  
2 know, but you see what I'm saying? The answer is the answer.

3 MR. KLEINMAN: Which would be fine if it wasn't upon  
4 information and belief. If you're bringing foreclosures  
5 against people you need to know who the creditor is.

6 MR. KENDRIC: Your Honor --

7 THE COURT: So the words "upon information and  
8 belief," that's what you're --

9 MR. KLEINMAN: Right. If it's the creditor, say it  
10 loud and proud.

11 MR. KENDRIC: I don't know if we even want to go  
12 down this road, Judge. Mr. Kleinman may or may not be aware  
13 of the fact that my firm represented Shapiro, Dicaro in the  
14 follow-up to Judge Schack's decision, the decision that the  
15 gentleman read from. There was an evidentiary hearing held as  
16 to whether Shapiro, Dicaro should or should not be sanctioned  
17 in some forum and it was found after a full hearing that there  
18 was no basis for sanctions.

19 Now, just -- I just lay that out for your  
20 consideration because --

21 THE COURT: It doesn't matter --

22 MR. KENDRIC: I understand.

23 THE COURT: -- what Judge Schack did or didn't do.

24 MR. KENDRIC: Yes.

25 THE COURT: I mean, I'm looking at a specific

1 interrogatory and an answer and try to decide whether it's  
2 efficient or not.

3 MR. KENDRIC: I understand, Your Honor. My only  
4 responsive comment with respect to adding the words "upon  
5 information and belief" is that where we believed something to  
6 be accurate we said as much. Where we were less than certain,  
7 we began our interrogatory response by saying "upon  
8 information and belief" and plaintiffs' counsel found fault  
9 with that. It's almost as if he wants it both ways. He wants  
10 something etched in stone and if we can't give it to him  
11 etched in stone, then he attacks us for being less than  
12 forthcoming with the Court.

13 THE COURT: Doesn't this response actually help you  
14 in the lawsuit? They don't know. It's upon information and  
15 belief so that then --

16 MR. KLEINMAN: I'm willing to adapt --

17 THE COURT: You know --

18 MR. KLEINMAN: I'm willing to adapt to  
19 defendant's --

20 THE COURT: Don't fight fights unless you absolutely  
21 have to.

22 MR. KENDRIC: Fair enough.

23 THE COURT: Interrogatory number one is fine.  
24 Interrogatory number two is fine. Interrogatory number three.  
25 Why can't you answer that? Isn't it -- I mean, isn't this --

1 either they are or they aren't and shouldn't -- is there a  
2 list somewhere that you can look at?

3 MR. KLEINMAN: I have it before them if they would  
4 like it, Judge.

5 MR. KENDRIC: Well, what would -- we're revisiting  
6 the first issue, then. We can do it upon information and  
7 belief based upon public documents. Do we know?

8 MR. KLEINMAN: Your Honor, it's not a question of  
9 being cute or being -- or trying to, you know, phrase and  
10 answer it a certain way. Do we know? We don't know. Can we  
11 say upon information and belief based upon the document? We  
12 absolutely can.

13 MR. KENDRIC: So --

14 THE COURT: But you didn't say it upon information  
15 and belief. You said it can be verified. It -- whenever  
16 someone -- whenever someone says, hey, it's publicly available  
17 information, yeah, so fine. Just give them the answer. So in  
18 some degree it is gamesmanship. It is game playing and  
19 parties do this all the time and it's annoying.

20 MR. KLEINMAN: Understood, Judge.

21 THE COURT: If it is, just say it, you know.

22 MR. KLEINMAN: So the answer to number three --

23 THE COURT: All right.

24 MR. KLEINMAN: -- Your Honor, interfaces with the  
25 answer to number two because First Financial Equities doing

1 business as The Mortgage Doctors' licensed mortgage banker was  
2 revoked and the date of --

3 THE COURT: What --

4 MR. KLEINMAN: -- the revocation is May 20, 2009.

5 THE COURT: So they -- when First Financial  
6 Equities, Inc., originated the mortgage -- or originated the  
7 note, they were not a licensed mortgage broker?

8 MR. KLEINMAN: No. I think on the date of the  
9 assignment of mortgage, which is March 27 --

10 THE COURT: 2010.

11 MR. KLEINMAN: -- 2010, Margaret Dalton, Vice  
12 President of First Financial Equities, Inc., through MERS made  
13 this assignment of mortgage --

14 THE COURT: To?

15 MR. KLEINMAN: -- JPMorgan Chase. What are you  
16 talking about? And the license was revoked. So it goes back  
17 to number two, identify the transfers. The documents you've  
18 given me are false on its face and the judge in JPMorgan  
19 Acquisition Corp. v. Richard Simmons, Judge Murphy said --

20 THE COURT: So the documents that you're citing to  
21 now were documents given to you by the defendants?

22 MR. KLEINMAN: No. I went and got them on my own.  
23 Margaret Dalton is a known robo signer.

24 THE COURT: Okay.

25 MR. KLEINMAN: She signs for 30, 40, 50 --



1 THE COURT: Why not bring a summary judgment motion?

2 MR. KLEINMAN: That's --

3 THE COURT: At this point.

4 MR. KLEINMAN: -- a state court decision that the  
5 state court lawyer doesn't want to do at this juncture. But  
6 for purposes of in this case having a lawyer file foreclosure  
7 and having that foreclosure signed under penalty of perjury  
8 that he knows that -- he knows the case and to give an  
9 assignment of mortgage of Margaret Dalton, who we'll see later  
10 in discovery they have no clue who Margaret Dalton is but the  
11 judge does.

12 THE COURT: Well, whatever the lawyer in the state  
13 court case wants to do is up to him. But what -- if you're  
14 saying that by filing this foreclosure action without knowing  
15 the transaction and the fact that it was a bogus transaction  
16 you violated the Fair Debt Collection Practices Act.

17 MR. KLEINMAN: Oh, it goes much further than that.

18 THE COURT: Well, what -- you're missing the point.  
19 You're missing the point. You have your ammunition. You're  
20 loaded.

21 MR. KLEINMAN: I'm loaded.

22 THE COURT: You're ready to go. Why not file a  
23 summary judgment motion?

24 MR. KLEINMAN: That's not a thing the defense lawyer  
25 doesn't want to do at this juncture.

1 THE COURT: Why should it matter what he wants to do  
2 at all? He's in a separate case. He doesn't control what  
3 happens here. He hasn't made an appearance --

4 MR. KLEINMAN: Correct.

5 THE COURT: -- in what happens here.

6 MR. KLEINMAN: In this case --

7 THE COURT: So if we were to give you -- if I were  
8 to say, you have until the end of this week to file a  
9 premotion letter with Judge Vitaliano because it looks like  
10 you have the information you need to move for summary  
11 judgment, he would say, no, don't do it.

12 MR. KLEINMAN: Correct. And the reason I would  
13 say --

14 THE COURT: I would have no control over him. Who  
15 is this person? Is it you?

16 MR. KLEINMAN: No.

17 THE COURT: All right. You know --

18 MR. KLEINMAN: Although I've been --

19 THE COURT: And why doesn't he want to? If -- why  
20 doesn't he want to?

21 MR. KLEINMAN: It's his position is that they'll  
22 have a free home for a longer period of time.

23 THE COURT: That's not a legitimate reason.

24 MR. KLEINMAN: I don't deem it legitimate but it's  
25 not my client in that case, but --

1 THE COURT: But it's the same client as in this  
2 case.

3 MR. KLEINMAN: Correct. They've elected an attorney  
4 in state court who's frankly a better attorney than me in  
5 those types of matters and he's kept them in their home and  
6 the longer he does, the longer the foreclosure industry falls  
7 apart.

8 THE COURT: Interrogatory number three is fine.  
9 Interrogatory number four is fine. Interrogatory number  
10 seven, information is better gleaned in a deposition.  
11 Interrogatory number nine, better gleaned in a deposition.  
12 Interrogatory number ten:

13 "State by year the number of persons who were sent  
14 by Shapiro, Dicaro & Barak between August 12, 2009, and the  
15 present complaints which claim JPMorgan Chase National  
16 Association to be the creditor, which contained an assignment  
17 of mortgage which contained the signature of Margaret Dalton  
18 in her capacity as vice president of Mortgage Electronic  
19 Systems, Inc., as nominee of First Financial Equities, Inc.  
20 Identify each such person."

21 Well, why is this relevant to the case? The  
22 objection is that it's irrelevant in part. Why is it  
23 relevant?

24 MR. KLEINMAN: Because they provide us assignment of  
25 mortgage signed by Margaret Dalton for an entity that lost its

1 license for -- by a person who's been found to be incredible  
2 by the Nassau County judge.

3 THE COURT: And you're bringing -- your clients are  
4 bringing this case as a purported class action.

5 MR. KLEINMAN: They are.

6 THE COURT: Is that -- all right. That's what you  
7 want to know. You want to know if there's numerosity,  
8 commonality, typicality, all that. This is part of your class  
9 discovery, correct?

10 MR. KLEINMAN: Yes. And mostly concerning Ms.  
11 Margaret Dalton. And as we see later in discovery they won't  
12 say who Margaret Dalton works for.

13 THE COURT: Why can't you answer this question  
14 understanding that what they're getting at is part of their  
15 class discovery?

16 MR. KENDRIC: Your Honor, I've reviewed the  
17 plaintiffs' complaint. I don't see any allegation that bears  
18 upon Margaret Dalton signing, robo signing. Once again,  
19 Mr. Kleinman speaks of a decision from a state Supreme Court.  
20 He's misstating the decision in the sense that the Court did  
21 not find Ms. Margaret Dalton to be incredible as a matter of  
22 law. He found that upon the -- that there was issues with  
23 respect to the sufficiency of the papers presented, that he  
24 could not -- that Judge Karen Murphy in the Supreme Court  
25 could not grant foreclosure on the papers presented.

1           Again, I feel like this is a theme that counsel is  
2 referring to other cases where I didn't represent the  
3 defendant in these other cases. I need to speak to this case  
4 and let me speak to this case.

5           Number one, when we get to the point of depositions,  
6 if counsel wishes to take depositions, he'll find out about  
7 dates and he'll find out about whether Liz Dalton was employed  
8 by whom and what have you. And here's my point, Your Honor.  
9 These assignment of mortgages -- and this is the point that I  
10 wished to make with you -- these assignment of mortgages can  
11 be thought of as bearer upons, bearer of documents. They are  
12 often supplied undated and they are supplied by -- they're  
13 supplied by a lender to the next lending institution who  
14 assumes responsibility for that mortgage.

15           These are -- if counsel wishes to question the  
16 validity of these transfers, the authenticity of these  
17 transfers, this is something which is to be litigated in the  
18 foreclosure matter. It's not a question, I don't think, for  
19 this court. I don't particularly see how when Margaret Dalton  
20 signed this assignment of mortgage or whether it predated or  
21 post-dated the original lender being a licensed New York state  
22 banking institution has anything at all to do with this case  
23 in which --

24           THE COURT: Well, what it has to do is if, in fact,  
25 it was a faulty assignment. And then a law firm later files a

1 foreclosure action without verifying whether the mortgage --  
2 the note was properly assigned, they're violating the Fair  
3 Debt Collection Practices Act.

4 MR. KLEINMAN: It may be a hint more nuanced than  
5 that, Your Honor, because when the Sebrows received the demand  
6 letter from Shapiro, Dicaro, LLP or Shapiro, Dicaro, LLC --  
7 whichever they claim to be on that date -- they sent two  
8 certified letters saying, I dispute this notion that JPMorgan  
9 Chase is a creditor of mine. In response to that they send  
10 verification documents which are not reliable. They're not  
11 reliable because it's from Margaret Dalton. They're not  
12 reliable because it's from MERS. They're not reliable from  
13 First Financial Equities. She's been found to be unreliable.  
14 That's why because they continued to prosecute --

15 THE COURT: Well, was she found to be not reliable  
16 at the time they send the verification or subsequent because  
17 if -- and I don't know that she was found not reliable is  
18 really the issue. It's whether they went back after the debt  
19 was disputed or who the proper creditor is and said, well,  
20 hey, we checked it. We looked at everything and everything  
21 lines up, everything was valid, everything was appropriate.

22 If they didn't go back and check, they've got a  
23 problem. If they went back and checked and made a mistake, I  
24 don't know how that shakes out.

25 MR. KLEINMAN: Well, they checked it out. They

1 thought this was like any other consumer who's not armed in  
2 the FDCPA and provided the usual types of documents that are  
3 provided. The problem with those documents are is they're  
4 unreliable. They're unreliable on their face. They're  
5 unreliable because counsel won't tell you who Margaret Dalton  
6 works for after providing both counsel and the consumer with  
7 the document saying who she works for. She works for MERS  
8 through First Financial. So to have a discovery dispute six  
9 months into the case saying, hey, the documents that you  
10 provided in verification, who does that person -- who is that  
11 signatory, I don't know. You don't know? You're prosecuting  
12 a class action -- you're prosecuting a foreclosure predicated  
13 on those documents. You don't know? How can you not know?  
14 Could you find out possibly? Why would I? So there's --

15 THE COURT: You'll get those -- I mean, you're going  
16 to take the deposition, right?

17 MR. KLEINMAN: But I -- that's the whole point of  
18 this is I want these in advance of the deposition. I want to  
19 go to Ms. Margaret Dalton and say, how many hats do you wear,  
20 and I also want to know why counsel can't find out who she  
21 works for in advance of my deposition.

22 THE COURT: Well, but this all -- this really gets  
23 to the -- ignores the issue with interrogatory number ten.  
24 Can you -- Mr. Kendrick, can your client say how many people  
25 fall within this class? I mean, because this goes to the

1 class. That's the way I see it, the size of the class.

2 Potential class because one hasn't been certified yet.

3 MR. KENDRIC: Can my client -- I don't know, Your  
4 Honor, but I'll find out --

5 THE COURT: All right.

6 MR. KENDRIC: -- in short order.

7 THE COURT: I think that that should be answered.  
8 Eleven is fine. I mean, if they answered yes to this number  
9 11, so I assume there is a letter of engagement.

10 MR. KENDRIC: Your Honor, in a supplemental  
11 production we supplied counsel with a redacted copy. It's not  
12 called --

13 THE COURT: It's a letter of engagement.

14 MR. KENDRIC: It's called something else.

15 THE COURT: Right.

16 MR. KENDRIC: It's a much more comprehensive  
17 document and we had thought that the plaintiffs' attorneys  
18 were disputing that Shapiro, Dicaro was even retained by the  
19 bank. And what we did was in order -- in an attempt I guess  
20 to show that indeed they had been retained by the bank, we  
21 supplied a redacted copy of the -- it's called a master  
22 services agreement.

23 THE COURT: Okay. That's fine. Twelve, thirteen  
24 and fourteen look fine to me. Seventeen is fine. Eighteen is  
25 fine. Twenty is fine. Twenty-one is fine. Twenty-two,



1 "State whether the note at issue has been separated from the  
2 mortgage." Pardon my ignorance. What does that mean? I'm  
3 not a closing attorney, never was, hopefully never will be. I  
4 don't know what that means.

5 MR. KLEINMAN: Both the note, Your Honor, and the  
6 mortgage cannot become separated. They have to travel in  
7 tandem.

8 THE COURT: Mhmm.

9 MR. KLEINMAN: And once they become separated,  
10 they're no longer enforceable. So the question is, were they  
11 separated.

12 THE COURT: Does your client know whether the note  
13 and the mortgage were ever separated? I know they've  
14 answered, look, we are the owner of both.

15 MR. KENDRIC: Not "we," Judge. Not "we."

16 THE COURT: Not your client. The -- I'm sorry, I'm  
17 sorry. The bank. You state the bank was the owner of both.

18 MR. KENDRIC: Just saying that based upon  
19 information and belief JPMorgan Chase was the beneficial owner  
20 of both the note and mortgage at the time the subject  
21 foreclosure complaint was filed. So that is a long-winded way  
22 of saying upon information and belief --

23 THE COURT: They were never separated.

24 MR. KENDRIC: No. They were never separated, to our  
25 knowledge.

1 MR. KLEINMAN: Then in that case they would be able  
2 to produce them.

3 THE COURT: The note and the mortgage?

4 MR. KLEINMAN: Yes.

5 THE COURT: And they haven't been produced?

6 MR. KLEINMAN: The word beneficial is weasel  
7 language. It's not, you have them, yes or no. "Beneficial"  
8 means I'm a beneficiary of something. You have them. It's  
9 physical and that's what Bank of New York v. Silverberg is  
10 really about. Who are you to prosecute a case if you don't  
11 have the note; you must have physical possession of the note.  
12 So throughout Bank of New York v. Silverberg --

13 THE COURT: That's -- but that's not what you asked.  
14 I mean, I'm dealing with a specific interrogatory, "State  
15 whether the note at issue has been separated from the  
16 mortgage." And based on the answer that we have to the  
17 interrogatory and Mr. Kendric's assertion which is binding on  
18 his client, the note and the mortgage were never separated.  
19 Whether they have them, physical possession of them is a  
20 separate issue. I assume that you've asked for them to be  
21 produced.

22 MR. KLEINMAN: If I haven't, I shall.

23 THE COURT: Okay. All right. Twenty-three looks  
24 fine to me. Twenty-four looks fine and twenty-five look fine.  
25 Deal with the interrogatories. And I'm -- where is the -- I

1 mean, request for production. Excuse me. Number three. What  
2 more would there be other than the note and the mortgage to  
3 indicate transfers of the rights and the alleged debt from one  
4 entity to another? I assume there would be assignments.

5 MR. KLEINMAN: There'd be assignments and there'd be  
6 money. Ready to go. For what consideration? Why would  
7 anyone want a defaulted mortgage? Would that violate the duty  
8 of a trustee not to take garbage? Who would want such an  
9 asset? It's worthless. Not collecting on it. And the  
10 assignments would probably show who the real owner of the  
11 mortgage is, which would be either Freddie Mac or Fanny Mae.

12 THE COURT: You haven't gotten the assignments yet?

13 MR. KLEINMAN: I have the assignments of Ms.  
14 Margaret Dalton. That's the assignment I have. And then I  
15 have one from when I moved to JPMorgan Chase. The problem --

16 THE COURT: So the assignment -- the assignment from  
17 First Equities, which was is the originator, correct?

18 MR. KLEINMAN: Mmhmm.

19 THE COURT: Goes to WaMu?

20 MR. KLEINMAN: Goes to WaMu undated.

21 THE COURT: And then there's one from WaMu to  
22 JPMorgan.

23 MR. KLEINMAN: Correct, but it appears that they've  
24 already given from WaMu to JPMorgan what's already been given  
25 elsewhere. So the bottom line is --

1 THE COURT: So wait, wait, wait. So it went from --  
2 so when WaMu transferred the interest -- assigned the interest  
3 in the note and the mortgage to JPMorgan they assigned that to  
4 someone else, too, or --

5 MR. KLEINMAN: No. I think it was already gone.

6 THE COURT: -- another enti --

7 MR. KLEINMAN: There was nothing to assign any  
8 longer.

9 THE COURT: Why do you say it was "already gone"? I  
10 don't -- I'm not sure what that means.

11 MR. KLEINMAN: I think it's already been assigned at  
12 that time.

13 THE COURT: It was assigned to?

14 MR. KLEINMAN: See if we can pull it up, Your Honor,  
15 if I can have a moment. The assignment of mortgage from MERS  
16 for First Financial to JPMorgan Chase was on March 27, 2010.

17 THE COURT: So it goes from First Financial to  
18 JPMorgan on March 27, 2010?

19 MR. KLEINMAN: From MERS as nominee for First  
20 Financial Equity.

21 THE COURT: Okay. All right.

22 MR. KLEINMAN: On that date. Then we're given  
23 another document that will show that it's been given elsewhere  
24 on an undated date. So can you give something away that you  
25 don't have?

1 THE COURT: And that other assignment on an undated  
2 date is from MERS as nominee for First Financial to whom?

3 MR. KLEINMAN: I don't want to speak out of turn --

4 THE COURT: Okay.

5 MR. KLEINMAN: -- without having the document, Your  
6 Honor. I don't want to give a mis-impression to the Court,  
7 but there are two assignments here.

8 THE COURT: Okay.

9 MR. KLEINMAN: And that assignment suddenly appears  
10 and that's the note itself and the note goes from Washington  
11 Mutual to Washington Mutual undated. So it's without recourse  
12 paid to order of Washington Mutual Bank, F.A., First Financial  
13 Equities, Inc., Robin J. Beck [Ph.], V.P., made to the order  
14 of WM.

15 So the question remains --

16 THE COURT: And that was part of -- that was  
17 attached as an exhibit to the foreclosure or something?

18 MR. KLEINMAN: It was provided in verification.

19 THE COURT: All right.

20 MR. KLEINMAN: So they're providing verification  
21 of --

22 THE COURT: Could I see that?

23 MR. KLEINMAN: Please. If I may approach.

24 THE COURT: So this is the note itself.

25 MR. KLEINMAN: Correct. And the beauty of it is

1 that it's undated so you can play with it as you like. The  
2 assignment of the mortgage from First Financial Equities to  
3 JPMorgan we know happened on March 27, 2010. So the  
4 \$64,000.00 question if I don't date myself with the question  
5 is, when did that occur.

6 THE COURT: All right. So hold on. This note  
7 was -- it bears the signature of your clients.

8 MR. KLEINMAN: It does.

9 THE COURT: I assume they signed this at the  
10 closing. Sometime subsequent to the closing this was assigned  
11 from First Financial --

12 MR. KLEINMAN: To JPMorgan.

13 THE COURT: Well, you said WaMu. Hold on.

14 MR. KLEINMAN: This will be -- if I may -- the  
15 assignment of mortgage.

16 THE COURT: Okay. Have this right here. Okay. No,  
17 but you said -- but you said that there was an assignment from  
18 WaMu to WaMu.

19 MR. KLEINMAN: Well, that's how that reads.

20 THE COURT: That's how the note reads?

21 MR. KLEINMAN: Yes. On the bottom left-hand corner.  
22 "Without recourse paid to the order of WaMu, First Financial."

23 THE COURT: All right. So you're saying that First  
24 Financial assigned this note because of this without recourse  
25 paid to the order of to WaMu.

1 MR. KLEINMAN: That's correct.

2 THE COURT: So then it could not later -- MERS as  
3 First Financial's nominee could not then later assign it to  
4 JPMorgan Chase?

5 MR. KLEINMAN: Can't settle the same dollar bill  
6 twice.

7 THE COURT: When was the closing?

8 MR. KLEINMAN: I couldn't tell you with accuracy,  
9 Your Honor, today.

10 THE COURT: Do you know who -- Mr. Kendric, does --  
11 do you know who -- what the import of this "without recourse  
12 paid to the order of WaMu"?

13 MR. KENDRIC: I do not.

14 THE COURT: Okay. If, in fact, First Financial  
15 Equities, Inc., had already assigned this note through this to  
16 someone else or sold it, they couldn't then sell it to  
17 JPMorgan Chase.

18 MR. KENDRIC: Judge, let me speak. Let me speak.

19 THE COURT: Unless they got it back somehow.

20 MR. KENDRIC: Let me speculate, Judge.

21 THE COURT: Sure.

22 MR. KENDRIC: My speculation is, as is common in the  
23 banking industry, larger banks always buy up smaller banks,  
24 let me speculate that JPMorgan Bank N.A. purchased Washington  
25 Mutual. I can't stand before you and say that is a fact, but

1 that's some -- that's my speculation, sir, so it wouldn't be a  
2 question of an assignment to one and then having nothing left  
3 to assign to another.

4 THE COURT: But the point of this, these two things,  
5 vis-a-vis this lawsuit is that when the foreclosure action was  
6 filed, it wasn't checked out and later -- and when it was  
7 verified, these documents were in the record and they  
8 didn't -- they ignored them or didn't follow-up on them to  
9 make sure that their client -- the law firm's client actually  
10 owned the note and mortgage.

11 MR. KLEINMAN: Slightly different. I have to  
12 dispense with any notion that Shapiro, Dicaro is the law firm  
13 for JPMorgan Chase. I take the liberty on a pro bono basis to  
14 go to every state court appearance and I asked Mr. Dicaro and  
15 I asked all the per diem attorneys if they represent JPMorgan  
16 Chase and their answer is, "I will not answer that question."  
17 So it's not their client. These cases come from middle men,  
18 nothing to do with JPMorgan Chase. If they did they'd give me  
19 a retainer and they have no retainer. If they did they'd give  
20 me a letter of engagement. There is no letter of engagement.

21 THE COURT: But you have this master services  
22 agreement?

23 MR. KENDRIC: Correct, Judge.

24 MR. KLEINMAN: It's a two-page master services  
25 agreement I've been given out of, I don't know, 60 or 80



1 pages. Everything else has been redacted. I have no idea  
2 what it is. No one can discern what it is. But to answer  
3 Your Honor's question is that the Sebrows are sophisticated  
4 through their long history of the Fair Debt Collection  
5 Practices Act. It's there on PACER. It's not going away.  
6 When they got their foreclosure complaint it had the 30-day  
7 notice in it so they took full advantage of it. They said,  
8 "We dispute the notion that JPMorgan Chase is our creditor and  
9 we dispute the notion that you've been retained and we dispute  
10 that you have verified this complaint because you said in your  
11 verification that JPMorgan Chase is not in Rochester and  
12 that's why the attorney has verified the complaint when, in  
13 fact, JPMorgan Chase -- isn't one JPMorgan Chase center in  
14 Rochester." So they disputed the debt.

15 Better attorneys than Shapiro, Dicaro would have  
16 said, oh-oh, we have a sophisticated consumer here, but they  
17 couldn't control themselves. They went and took these phony  
18 documents and tossed it to the Sebrows and then prosecuted the  
19 action before they could even get the verification to them.  
20 That's how rabid they are. Even when they see a sophisticated  
21 dispute they continue with the prosecution. That's the claim.  
22 Even before they verified the debt they went and hauled them  
23 into Queens court. That's the claim.

24 They're unstoppable knowing full well that this  
25 couldn't be the creditor, that every document that you've

1 proffered in this case and their defense to the case is a *bona*  
2 *fide* error, that when Mr. Chatwin [Ph.] verified this  
3 complaint saying the reason he verified it is because JPMorgan  
4 Chase is not in Rochester, they say it was a *bona fide* error.  
5 And at the very initial conference that we appeared and Mr.  
6 Kendric didn't have the opportunity to appear because there  
7 was other counsel involved, they told us and they told the  
8 Court that the reason -- there was another reason why Mr.  
9 Chatwin verified this complaint. It wasn't like he stated  
10 that JPMorgan Chase isn't in Rochester. There's a different  
11 reason. And I can short-circuit this all by admission number  
12 16. I ask, demand 16, "Admission that officers of JPMorgan  
13 Chase Bank N.A. do not sign the complaint verification when  
14 Shapiro, Dicaro & Barak are the attorneys of record."

15 Response, objection. "Plaintiffs' request to admit  
16 is completely relevant." So the question of the day is, what  
17 was the error that Mr. Chatwin made in verifying the complaint  
18 because what I read in admission number 16 response is that  
19 whenever Shapiro, Dicaro files a foreclosure complaint,  
20 Shapiro, Dicaro signs the verification. So what is the error?  
21 What could possibly be the error? And no one will enunciate  
22 the error.

23 THE COURT: Did -- Mr. Kendric.

24 MR. KENDRIC: Yes.

25 THE COURT: Has your client produced all of the

1 documents it has in its possession, custody or control  
2 concerning the Sebrows' account, the closing, the mortgage,  
3 the note, any assignments, any documents that tracks the paper  
4 from origination to when it'd got in JPMorgan Chase's hands  
5 and then the foreclosure action was filed?

6 MR. KENDRIC: Your Honor, with respect to the  
7 Sebrows and not speaking about other actions, which we've  
8 discussed already earlier in the conference, with respect to  
9 the Sebrows it is my belief, as their attorney, and they have  
10 turned over all of their documents to me and that I have  
11 turned over all the documents -- or my predecessor did to  
12 plaintiffs' counsel. There's a lot -- I mean, I don't know  
13 if -- I don't know if the Court is interested in me addressing  
14 all the hyperbole. There's a lot of assumptions, a lot of  
15 forceful assertions but, you know, the documents say what they  
16 say and if they need any clarification I trust the counsel  
17 will ask about them at the time of depositions. I'm trying to  
18 play by the rules, Your Honor. I'm trying to give plaintiffs'  
19 counsel what he's entitled to. I'm trying not to lay down on  
20 my client and just -- and just let him turn this matter into a  
21 free-for-all discovery for his clients' foreclosure matter.

22 What we're here to discuss, I had thought, Judge,  
23 was whether Shapiro, Dicaro had somehow deceived or duped the  
24 Sebrows when they sent them the collection letters.

25 THE COURT: Well, but part of that is -- part of

1 that is what -- you know, the underlying deal and the  
2 documents because the Sebrows did request clarification and if  
3 your client didn't verify it, it violated the Fair Debt  
4 Collection Practices Act.

5 MR. KENDRIC: But --

6 THE COURT: So I mean, that's what -- you know, what  
7 I'm concerned with. And I want to make sure all the documents  
8 that exist have been produced, that the appropriate deponents  
9 are deposed and asked whatever questions and we get to the  
10 bottom of this. I mean, if you, Mr. Kleinman, have a set of  
11 documents that Mr. Kendric produced.

12 MR. KLEINMAN: I do, Your Honor. And in a lot of  
13 ways I'm in agreement with what Mr. Kendric just said. So we  
14 have a foreclosure complaint filed by Shapiro, Dicaro. It  
15 contains a verification in it. The verification says that  
16 Shapiro, Dicaro signed verification because JPMorgan Chase is  
17 not in Rochester. That was my lawsuit, a big part of the  
18 lawsuit. So we're told that was in error. So I'm just trying  
19 to ascertain with admission number sixteen, okay, what was the  
20 error? What did they want to do? What did they intend to do?  
21 We all make errors. We don't do it on verifications that  
22 often, but we'll give them that. They made an error  
23 on represent --

24 THE COURT: [Sneezes.]

25 MR. KLEINMAN: Bless you.

1 THE COURT: Excuse me. But they answered demand  
2 number 16.

3 MR. KLEINMAN: No.

4 THE COURT: Request for admission, number sixteen?

5 MR. KLEINMAN: Objection. Completely irrelevant.

6 THE COURT: "Notwithstanding and without waiving  
7 such objection defendants admit that insofar as a foreclosure  
8 complaint prepared and served upon them" -- excuse me --  
9 "served by them upon plaintiffs' herein is concerned, JPMorgan  
10 Chase National Association did not sign the verification  
11 corresponding to such complaint."

12 So they admitted it.

13 MR. KLEINMAN: No. The rationale behind the  
14 question, Your Honor, is that what was the *bona fide* error in  
15 Mr. Chatwin's --

16 THE COURT: But that's not what you asked. You  
17 said, "Officers of JPMorgan Chase Bank National Association do  
18 not sign" -- oh, I see -- "do not sign the complaint  
19 verification when Shapiro, Dicaro & Barak are the attorneys of  
20 record."

21 MR. KLEINMAN: Right. So it's not --

22 THE COURT: And they flipped it and said, did not  
23 sign this particular verification.

24 MR. KLEINMAN: Right.

25 THE COURT: So ask Mr. Shapiro, if you're going to

1 depose him, about other -- you know, what is the standard  
2 practice.

3 MR. KLEINMAN: I think that was the basis of the  
4 admission and they -- and that's what it is. The answer is  
5 no. Shapiro, Dicaro signs it, so it's not a *bona fide* error,  
6 so their entire *bona fide* error goes out the window.

7 THE COURT: You're arguing merits. I mean, I'm  
8 not -- and what the implication of a particular response is.  
9 You know, that's not my purview. My purview is whether this  
10 response is sufficient and it was partially responsive.

11 And let me ask you, Mr. Kendric.

12 MR. KENDRIC: Yes.

13 THE COURT: Does -- is there a standard practice  
14 when JPMorgan Chase is concerned and foreclosures are brought  
15 by Shapiro, Dicaro & Barak on who signs the verification?

16 MR. KENDRIC: Unaware, Judge. I'll look through  
17 that master services agreement. I rather doubt it's going to  
18 be in there and I'll confer with the client.

19 THE COURT: Whoever is deposed better be prepared to  
20 answer that question.

21 MR. KENDRIC: Yes, sir.

22 MR. KLEINMAN: In that vein, Your Honor, I think  
23 we're going to need a six-month extension on the discovery to  
24 name new entities and to name the partners of Shapiro, Dicaro  
25 and to get some depositions done.

1 [Pause in the proceedings.]

2 THE COURT: Looks like we've already extended  
3 discovery twice. Twice there -- okay. I can't get access to  
4 Lotus notes, Miriam. Never mind.

5 I assume, Mr. Kendric, you have no objection.

6 MR. KENDRIC: I don't know that we need six months,  
7 Your Honor.

8 THE COURT: Yeah.

9 MR. KENDRIC: But this is what I do know, sir.  
10 August 9, 2011, we served plaintiff's counsel with a demand  
11 for interrogatories and a demand for document production.  
12 That was the due date for those responses was originally  
13 September 12 extended by agreement between counsel to October  
14 12. So if that aids the Court in making up its mind in terms  
15 of whether we need more time, I have not even received  
16 plaintiffs' initial discovery responses yet.

17 THE COURT: Okay. April 27th. No further  
18 extensions under any circumstances. Better get moving if you  
19 want this to be a class action. You'd better do all your  
20 class discovery, get everything done. I am denying the motion  
21 in large part because I think a lot of what has been asked is  
22 more appropriately dealt with in a deposition. Whoever comes  
23 prepared -- whoever is deposed better be able to answer  
24 questions. If they're not, then we're going to have problems.

25 Keeping in mind that this is a purported class

1 action and, you know, refusing to answer a question because it  
2 goes beyond the Sebrows' particular dispute is not going to be  
3 sufficient, not going to be acceptable. At -- you know, what  
4 the plaintiffs are getting at is the standard practice of the  
5 firm when JPMorgan is the client and I think they're entitled  
6 to ask questions along those lines.

7           When is the next conference, Miriam? Looks like it  
8 should be around January 23rd. January 26th. All right.  
9 We're going to keep that conference and we're going to add one  
10 for the first week of May.

11           THE CLERK: Do you want me to look?

12           THE COURT: Yes.

13           THE CLERK: I'm sorry.

14           THE COURT: It's okay.

15           THE CLERK: May 1st.

16           THE COURT: Sounds good.

17           THE CLERK: Ten o'clock.

18           THE COURT: May 1st, ten o'clock. All right.

19           MR. KLEINMAN: One last item, Your Honor.

20           THE COURT: Sure.

21           MR. KLEINMAN: Prior to the conference Mr. Kendric  
22 offered me a ride back. I want to make sure that's still in  
23 force.

24           THE COURT: That's -- I'll leave that up to you  
25 folks.



1 MR. KENDRIC: All right. Thanks very much.

2 MR. KLEINMAN: Thanks.

3 MR. KLEINMAN: Thank you, Judge.

4 (Proceedings concluded at 11:07 a.m.)

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1 I certify that the foregoing is a court transcript  
2 from an electronic sound recording of the proceedings in the  
3 above-entitled matter.

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7 Ruth Ann Hager, C.E.T.\*\*D

8 Dated: January 12, 2012  
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